Brief

Processing of applications for Danish citizenship by naturalisation from applicants covered by the UN Convention on the Reduction of Statelessness of 1961 (the 1961 Convention), and who PET (the Danish Security and Intelligence Service) assesses as a potential threat to national security, or who are charged or indicted for offences against national security or a criminal offence that can result in imprisonment of 5 years or more

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1. Introduction and background

Under the 1961 Convention, Denmark is obliged to grant citizenship to persons who are born in Denmark and covered by the 1961 Convention, provided that the conditions of the convention are met. In principle, this also applies for persons who the Danish Security and Intelligence Service (PET) assesses as a potential threat to national security.

The government does not wish to grant Danish citizenship to stateless persons covered by the 1961 Convention if PET assesses that the person in question is a potential threat to national security, or if the person in question is currently charged or indicted for offences against national security or a criminal offence that can result in imprisonment of 5 years or more.

The government notes in this connection that the 1961 Convention does not in itself oblige the contracting states to grant citizenship to an applicant covered by the convention immediately upon the submitted application. In this regard, the convention does not contain a requirement of case processing within a defined time. Furthermore, in the assessment of the government, it would not contravene the object and purpose of the 1961 Convention or the considerations on which the Convention is based to postpone the assessment of whether an applicant is entitled to the granting of Danish citizenship under the Convention, to the extent that such postponement can be objectively justified.

Therefore, going forward, the government will postpone the processing of applications from stateless persons covered by the 1961 Convention for as long as PET assesses that the applicant is a potential threat to national security, or as long as the charge or indictment is upheld. The government will, every six months and on

its own initiative, in every single case ensure that there is still an objectively justified basis for a postponement, in addition to other foreseen safeguards based on existing oversight mechanisms.

It is the understanding of the government that the UNHCR concurs with the view of the government that this new approach is in line with the 1961 Convention.

The background for the government's approach to this issue is further described in this brief.

Section 2 of this brief contains a review of the Danish citizenship system. Section 3 contains a description of the mechanisms for oversight of PET. Section 4 presents a review of Denmark's relevant international obligations relating to citizenship.

Section 5 then provides a detailed explanation of how the government will now handle cases of the above-mentioned nature, implementing the approach of postponing the final consideration of whether citizenship is to be granted.

2. The Danish citizenship system

Pursuant to section 44 (1) of the Danish Constitution, no alien can obtain citizenship by means other than law (naturalisation). Thus, the Danish Parliament decides who is to be granted Danish citizenship.

The conditions for obtaining Danish citizenship by naturalisation are outlined in Circular no. 10873 of 13 October 2015 on Naturalisation. Traditionally, the guidelines for naturalisation have been based on political agreements concluded by a majority in the Parliament. The political agreement sets out the guidelines for the drafting of a bill on the granting of citizenship. Deviation from these guidelines is only permitted with the support of a parliamentary majority, which in practice means a majority of the Danish Parliament's Naturalisation Committee. Questions regarding dispensation from the provisions of the Circular and the interpretation of matters of doubt are always submitted to the Committee. Dispensation can only be granted if a majority of the Committee's members vote in favour.

In relation to the processing of applications for naturalisation, the Nationality Division of the Ministry of Immigration and Integration serves a secretariat function for the Danish Parliament (Naturalisation Committee), reviewing on behalf of the Parliament whether applicants meet the conditions for obtaining Danish citizenship outlined in the Circular. As with other matters regarding immigrants, this form of case processing means that the minister does not deal with individual cases, nor is the minister presented with briefs on practice or the like. The minister holds the political responsibility for the office's work under the Ministry of Immigration and Integration, but the Nationality Division has always performed a dual role: it is an ordinary case processing office at the ministry, while also serving

a secretariat function in relation to the Danish Parliament's Naturalisation Committee.

Pursuant to the Circular, there are special cases in which an application for Danish citizenship must be submitted to the Danish Parliament's Naturalisation Committee for consideration of dispensation from the applicable guidelines. The Danish Parliament's Naturalisation Committee holds sole power to decide whether an applicant for Danish citizenship can be granted dispensation from one or more of the conditions in the Circular.

Section 21 of the Circular prescribes that the cases of persons who are assessed as a potential threat to national security must be submitted to the Naturalisation Committee.

The Ministry of Immigration and Integration's submission to the Danish Parliament's Naturalisation Committee does not include a recommendation regarding the Committee's decision on granting dispensation to the applicant in question. The only exception to this practice is in the case of persons assessed as a potential threat to national security, in which case the submission includes a recommendation from the Minister of Justice suggesting exclusion for a specified period of time, see below.

2.1. Persons who are assessed as a potential threat to national security

Prior to the proposal of a bill on the granting of citizenship, PET is notified of all persons included in the bill so that PET can assess whether any of the included persons are a potential threat to national security.

If PET assesses that a person is a potential threat to national security, the person in question – on the recommendation of the Minister of Justice and after prior submission to the Danish Parliament's Naturalisation Committee – will typically be removed from the bill.

In this process, the Ministry of Immigration and Integration receives notification from the Ministry of Justice that a named person is assessed by PET as a potential threat to national security. No detailed background for this assessment is included in the notification.

On the basis of the information from the Ministry of Justice, the Ministry of Immigration and Integration submits the case to the Danish Parliament's Naturalisation Committee with a recommendation to exclude the person in question from inclusion in the bill on the granting of citizenship for a specified period of time. In practice, PET generally recommends exclusion of the applicant for a period of 5 years. The case is submitted confidentially to the Committee and is not submitted with the name, but only with information about nationality, place of birth, year of birth and details about the issuance of a Danish residence permit.

Cases in which a person is covered by the 1961 Convention and assessed by PET as a potential threat to national security are also submitted to the Danish Parliament's Naturalisation Committee for the Committee's decision on whether the applicant will remain listed in the bill, irrespective of the assessment by PET that the person in question is a potential threat to national security. The submission is provided without a recommendation on exclusion from citizenship, as the Committee is informed of the relevant convention obligations.

3. Controls on the Danish Security and Intelligence Service (PET)

3.1. Citizens' access to insight into information

Pursuant to section 12 (1) of the Danish Security and Intelligence Service Act, a physical or legal person does not have the right to insight into information that PET processes about said person or the right to insight into whether PET is processing information about said person.

However, under section 12 (2) of the Danish Security and Intelligence Service Act, PET may grant full or partial insight into information mentioned in section 12 (1) of the Act, if exceptional circumstances justify such insight. The rejection of an application for citizenship due to a threat assessment by PET will not in itself justify full or partial insight.

Additionally, section 13 (1) of the Danish Security and Intelligence Service Act states that a physical or legal person can request that the Danish Intelligence Oversight Board (the Oversight Board) investigate whether the service is processing information about the person in question without justification. The Oversight Board ensures that this is not the case, and then informs the person in question accordingly.

The procedural history of the Danish Security and Intelligence Service Act states that the notification by the Oversight Board must only imply that no unjustified processing of information about the person in question is taking place. Thus it must not be expressly or implicitly stated that information has been processed or that justified processing of information is taking place.

Section 13 (3) states that, if justified by exceptional circumstances, the Oversight Board can order PET to grant full or partial insight into information mentioned in section 12 (1). The order is legally binding for PET.

The procedural history further states that section 13 (2) – now section 13 (3) – of the Danish Security and Intelligence Service Act is intended to serve as a safety valve that supplements section 12 (2) of the Act. Furthermore, it also states that the fact that PET has processed information about a person, etc. without justification does not in itself constitute sufficient grounds for the Oversight Board to order PET to grant insight into information about the person in question under

the current section 13 (3). Regarding the nature of exceptional circumstances that can justify an order to PET, refer to the explanatory memorandum on section 12 of the Danish Security and Intelligence Service Act.

3.2. The Danish Intelligence Oversight Board

The Danish Intelligence Oversight Board is a special independent monitoring body that was established on 1 January 2014. It is stated in the Danish Security and Intelligence Service Act that the president of the Oversight Board must be a judicially appointed High Court Judge.

Acting in response to complaints or on its own initiative, the Oversight Board ensures that PET processes information about physical or legal persons in accordance with the Danish Security and Intelligence Service Act and the rules issued pursuant thereto, see section 18 of the Danish Security and Intelligence Service Act.

The Oversight Board must ensure that PET complies with the rules of the Act on:

- procurement of information, including gathering and collection;
- internal processing of information, including deadlines for the deletion of information;
- transfer of information, including to the Danish Defence Intelligence Service (FE) and to other Danish administrative authorities, private recipients, foreign authorities and international organisations; and
- prohibition of processing information about physical persons residing in Denmark solely on the basis of their legal political activity.

The Oversight Board thus inspects, among other things, whether PET is processing information about a person without justification.

The task of the Oversight Board is to perform checks of the legality of PET's processing of information about physical and legal persons in accordance with the law. Thus the Oversight Board does not check whether PET performs its tasks in an expedient manner, including how the service prioritises its operative and intelligence resources, as this is based on a police assessment. Therefore, the Oversight Board cannot review PET's assessment of whether, for example, a person constitutes a threat to national security, see chapters 12 and 13 of the Danish Criminal Code. The Oversight Board can check whether the information that constitutes the basis for the assessment has been processed in accordance with the Danish Security and Intelligence Service Act.

The Oversight Board notifies the Minister of Justice of matters about which the minister, in the view of the Oversight Board, should be aware. If, in exceptional cases, PET decides not to follow a recommendation in a statement from the Oversight Board, see section 19 (1) of the Danish Security and Intelligence Service Act,

PET must inform the Oversight Board accordingly and, without undue delay, submit the case to the Minister of Justice for a decision, see section 19 (2) and (3) of the Danish Security and Intelligence Service Act.

The Oversight Board can demand that PET provide all information and all materials of significance for the Oversight Board's activities, see section 20 (1) of the Danish Security and Intelligence Service Act. The Oversight Board can also require written statements from PET regarding factual and legal matters of significance for the Oversight Board's activities, see section 20 (3) of the Danish Security and Intelligence Service Act.

3.3. Oversight by the Danish Parliament

The Danish Parliament's Intelligence Services Committee (ISC) has the parliamentary insight into PET. The Committee must be informed of significant circumstances relating to: security, foreign policy issues, matters of importance to the activities of the intelligence services, and the content of certain guidelines on the activities of the intelligence services prior to the issuances of said guidelines.

ISC must be given a detailed annual orientation on the activities of PET. The government is obliged, upon request by ISC, to give the Committee information about the activities of PET, including statistical information, and the Committee can require that the head of PET participate in Committee meetings. The annual report that PET is required to issue pursuant to the Danish Security and Intelligence Service Act must be submitted to the Committee before it is made public.

ISC can request that PET provide a report on matters pertaining to the activities of PET, including the background for threat assessments that have resulted in the rejection of applications for citizenship. However, the Committee does not have the power to revise a threat assessment.

3.4. Oversight by the Ministry of Justice

The Ministry of Justice performs oversight of PET, and the intelligence service is subject to the instructions of the minister. The head of PET reports directly to the Minister of Justice, even though PET is organisationally under the auspices of the Danish National Police.

In this regard, it is incumbent upon the head of PET to always keep the Ministry of Justice directly informed about all matters of importance pertaining to the country's internal security and generally on all matters of importance within the activities of the intelligence service, including as regards all important individual cases, see section 1 (1) (4) of the Danish Security and Intelligence Service Act.

Section 2 of the Danish Security and Intelligence Service Act further states that PET must submit an annual report on its activities to the Minister of Justice and

that this report must be made public. The report must provide general information on PET's ordinary activities and must include a general review of PET's activities during the year, as well as the service's economic and administrative circumstances.

4. Denmark's international obligations

4.1. UN Convention on the Reduction of Statelessness of 30 August 1961

In 1977, Denmark ratified the UN Convention on the Reduction of Statelessness of 30 August 1961 (the 1961 Convention).

Pursuant to article 1 of the 1961 Convention, member states are obliged to grant citizenship to stateless persons who are born in the country, either at birth in accordance with law, or by application. Article 1 (2) of the convention states that a contracting state can make the granting of citizenship subject to one or more listed conditions, including: that the person has always been stateless; that the application eligibility window must start no later than the age of 18 and must end no earlier than at the age of 21; that the person has had permanent residence for a designated period of time not exceeding 5 years immediately prior to application, or 10 years in total; and that the person has not been found guilty of an offence against national security or sentenced to imprisonment of 5 years or more for a criminal offence.

In accordance with the 1961 Convention and pursuant to the Circular on Naturalisation, applicants who were born stateless in Denmark are listed in a bill on the granting of citizenship without being subject to the normal conditions for naturalisation. However, the following conditions must be met:

1) The applicant must have permanent residence in the country.
2) The application must be submitted from the age of 18 and before the age of 21.
3) The applicant must have had permanent residence in Denmark for 5 years immediately before the submission of the application or 8 years in total.
4) The applicant must not have been found guilty of any offence against national security or sentenced to imprisonment of 5 years or more for a criminal offence.
5) The applicant has always been stateless.

Furthermore, the applicant must submit a sworn declaration that the applicant has not be found guilty of any offence against national security or sentenced to imprisonment of 5 years or more for a criminal offence.

4.2. The European Convention on Nationality

In 2002, Denmark ratified the European Convention on Nationality of 6 November 1997 (Convention on Nationality).

The Convention on Nationality compiles, supplements and expands upon the international conventions on citizenship that existed at the time of the convention's adoption, and its aims include the establishment of international principles and standards in this area.

Pursuant to article 10 of the Convention on Nationality, all contracting states must ensure that applications for acquisition of citizenship in the country are processed within a reasonable time.

The explanatory report on the Convention on Nationality only provides limited contributions to a detailed understanding of the scope of article 10. It follows from the explanatory report that the determination of whether an application is processed within a reasonable time must be made in the light of all relevant circumstances.

4.3. Access to judicial review

In its judgment of 13 September 2013, the Supreme Court stated that Denmark has acceded to a number of international conventions that may affect the processing of applications for citizenship or for the granting of citizenship. According to the Supreme Court, these international obligations are to be complied with by Parliament and its Naturalisation Committee when assessing if Danish citizenship is to be granted to an applicant. An applicant who has not been included in a bill on the granting of citizenship can thus have the courts review if these international obligations have been violated and if the applicant for that reason is entitled to compensation.

5. The feasibility of postponing consideration of specific applications

5.1. Legal assessment

In the assessment of the Ministry of Immigration and Integration, the 1961 Convention does not in itself oblige the contracting states to grant citizenship to an applicant covered by the convention in immediate connection with the submitted application. In this regard, the ministry notes that the convention does not contain a requirement of case processing within a defined time.

Furthermore, in the assessment of the Ministry of Immigration and Integration, it would not contravene the purpose of the 1961 Convention or the considerations on which the convention is based to postpone the assessment of whether an applicant is entitled to the granting of Danish citizenship under the convention, to the extent that such postponement can be objectively justified, for example on the basis that the applicant in question is a potential threat to national security, or

that the applicant is currently charged or indicted for offences against national security or a criminal offence that may result in imprisonment of 5 years or more.

Such postponement of the assessment of whether an applicant is entitled to the granting of Danish citizenship under the convention will not contravene the Convention on Nationality as long as the specific case, following an overall assessment, can be processed within a reasonable time. In this connection, it must be deemed of great importance that a contracting state's intelligence service should have the opportunity to assess the applicant in question, and that such assessment can be difficult and time consuming, given the general and complex nature of existing threats. Furthermore, it must also be deemed of great importance that a contracting state's police and prosecuting authority should have the opportunity to investigate and conduct a criminal case against such applicants before the contracting state makes a decision to grant them citizenship.

It is on this background that the Ministry of Immigration and Integration assesses that that it will not contravene Denmark's international obligations, including the 1961 Convention, to postpone the assessment of whether an applicant covered by the 1961 Convention is entitled to inclusion in a bill on the granting of citizenship in cases where PET assesses that the applicant is a potential threat to national security. Furthermore, it would not contravene the 1961 Convention to postpone such cases if the applicant is currently charged with or indicted for offences against national security or a criminal offence that can result in imprisonment of 5 years or more.

In the assessment of the Ministry of Immigration and Integration, the postponement of the assessment of whether an applicant is to be rejected or included in a bill on the granting of citizenship can be extended for as long as PET assesses that the applicant is a potential threat to national security, or as long as the charge or indictment against the applicant is upheld. However, it is a requirement that the postponement does not result in the applicant not receiving a decision within a reasonable time.

5.2. New procedure for the processing of applications from stateless persons covered by the 1961 Convention

Going forward, based on the above assessment – in cases where PET assesses that an applicant covered by the 1961 Convention is a potential threat to national security, or in cases where the applicant is charged or indicted for offences against national security or a criminal offence that can result in imprisonment of 5 years or more, and where the applicant otherwise meets the convention's conditions for citizenship – the Ministry of Immigration and Integration will postpone the processing of the case.

In these cases, the Ministry of Immigration and Integration will not issue a rejection of the applicant's application, and, as a general rule, the ministry will not submit the application to the Danish Parliament's Naturalisation Committee.

To ensure that the necessary basis for postponement of the case remains in force in instances where PET has assessed that the applicant is a potential threat to national security, the Ministry of Immigration and Integration will every six months, *and on its own initiative*, request a renewed PET assessment of the applicant. This will be done in connection with the two semi-annual bills on the granting of citizenship, which are typically presented to the Danish Parliament in April and October.

In cases where the applicant is charged or indicted for offences against national security or a criminal offence that can result in imprisonment of 5 years or more, the ministry will also, *on its own initiative*, confirm that the charge or indictment is still in force.

If, based on a concrete assessment, the Ministry of Immigration and Integration finds that a decision should be made in the case in view of the overall case processing time, the ministry will submit the case to the Danish Parliament's Naturalisation Committee without a recommendation, but with a report on the relevant convention obligations.

In these cases, it will be up to the Danish Parliament to determine whether a decision is to be made in the case, or if the decision should remain postponed subject to clarification of the applicant's circumstances.

In conclusion, it is important to emphasise that this new procedure only postpones the time at which a person will receive a decision regarding their application for Danish citizenship. The postponement is carried out with reference to the assessment that the applicant is a potential threat to national security, or the fact that the applicant is charged or indicted for offences against national security or an offence that can result in imprisonment of 5 years or more. Thus, the new procedure does not exclude stateless persons from applying for Danish citizenship and it does not lead to rejections of applications of stateless persons in violation of the provisions of the 1961 Convention. Finally, the applicants in question may have the courts review whether the relevant international obligations have been violated and whether the applicants for that reason are entitled to compensation.